Had a court of adm. jurisdiction Dist Ct

2 In the case same as Steamer Ball?

Reversed Filed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~297.~~ 103

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE STEAMER MONTELLO, HER BOATS, TACKLE, APPAREL, AND FURNITURE—STEPHEN M. BOOTH AND CHARLES W. SLAYTON, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED NOVEMBER 30, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 297.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE STEAMER MONTELLO, HER BOATS, TACKLE, APPAREL, AND FURNITURE—STEPHEN M. BOOTH AND CHARLES W. SLAYTON, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1 Circuit court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the thirteenth day) of September, A. D. 1869—present and presiding, the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit; Charles S. Hamilton, marshal; Edward Kurtz, clerk—among other the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
THE STEAMER MONTELLO, HER BOATS, TACKLE, apparel, & furniture—Stephen M. Booth & Charles W. Slayton, claimants. } Appeal in admiralty.

Be it remembered that heretofore, to wit, on the 30th day of June, A. D. 1868, a certified copy of record on appeal of said cause from the district court of the United States for the district of Wisconsin was received from the clerk of said court, and filed in the clerk's office of this court as follows, to wit:

2 *District court record.*

District court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the thirteenth day) of April, A. D. 1868—present, the Honorable Andrew G. Miller, judge of said court, presiding; Cassius Fairchild marshal; John M. Miller, clerk—among other the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
against
THE STEAMER MONTELLO, HER BOATS, TACKLE, apparel, and furniture—Stephen M. Booth, claimant. } In admiralty.

Be it remembered that heretofore, to wit, on the twenty-eighth day of December, A. D. 1867, came the United States district attorney, Mr. Cogswell, and presented to the court a libel of information against the steamer Montello, her boats, tackle, apparel, and furniture, as follows:

Libel of information.

To the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin:

The libel of information of J. B. D. Cogswell, attorney of the United

States for the district of Wisconsin, who prosecutes for the United States in this behalf, against the steamer Montello, her tackle, apparel, and furniture, in a cause of seizure, alleges and informs as follows:

That on the 20th December, A. D. 1867, at Eureka, in said district, and on waters navigable, C. L. Sholes, esqr., collector for the
3 port of Milwaukee, seized said steamer, her tackle, apparel, and furniture, and now holds and has the same in his custody, as forfeited to the United States, for the causes hereinafter mentioned, to wit:

First. That on the 1st day of October, A. D. 1867, the said steamer was used and employed in the transportation of passengers, and did carry passengers on the navigable waters of the United States, the hull of said steamer not having been inspected, pursuant to the provisions of the acts of Congress, at any time within twelve months prior to said first day of October. By reason whereof and by virtue of said acts of Congress, the owner or owners and master of the said steamboat, being a vessel propelled in whole or in part by steam, forfeited and became liable to pay to the said United States the sum of five hundred dollars, for the payment of which sum the said steamboat hath become liable to be seized and proceeded against summarily by way of libel, and for the recovery of which this civil and maritime cause is now instituted.

Second. That all and singular the premises are true, and within the admiralty & maritime jurisdiction of this court.

Wherefore the said attorney of the United States, on behalf of the said United States, prays the usual process and monition against
4 the said steamboat, and her tackle, apparrel, and furniture, and that all persons interested therein may be cited to appear and answer the same, and that the court may be pleased to decree for the penalties aforesaid, and that the said steamboat may be condemned and sold to pay the several penalties aforesaid, with costs, and for such other relief as shall to law and justice appertain.

JNO. B. D. COGSWELL,
U. S. Attorney, Wis.

Order for process & advertisement.

Whereupon it is ordered by the court that process issue to the marshal, returnable on the eighteenth day of January next, at eleven o'clock in the forenoon, and that this court will on that day proceed to the trial and hearing thereof; and it is further ordered that notice be given by advertisement in the Daily Milwaukee News, a paper published in the city of Milwaukee, and by notices posted in the most public manner at and near the place of trial, for at least fourteen days.

Whereupon a monition issued as follows:

5 *Monition.*

DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of Wisconsin on the twenty-eighth day of December, in the year of our Lord one thousand eight hun-
[SEAL.] dred and sixty-seven, by the United States of America against the steamer Montello, her boats, tackle, apparel, and furniture,

for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had that the said steamer or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamer or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin, on the 18th day of January next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this twenty-eighth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

J. M. MILLER, *Clerk*.
By E. KURTZ, *Deputy*.

JNO. B. D. COGSWELL,
U. S. Dist. Attorney.

6 *Return.*

Monition returned: In obedience to the within precept I have, this 2nd day of January, 1868, attached the steamer Montello, her boats, tackle, apparel, and furniture, at Eureka, in this district, and have given due notice by advertisement in the Milwaukee News, for fourteen days, and by posting notices, to all persons claiming the same, that this court will, on the eighteenth day of January next, at eleven o'clock in the forenoon of that day, if the same shall be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same, and they make their allegations in that behalf.

CASSIUS FAIRCHILD, *Marshal*,
By JAMES A. BIGGERT, *Deputy*.

Fees.

Service	2 00
Travel	6 24
Proclamation	30
Custody	42 50
Printer	9 00
	$60 04

Claim't's stipulation.

MARCH 27TH, 1868.—This day came Stephen M. Booth as claimant of said steamer Montello, her boats, &c., and presented his stipulation, with William H. Wolf as surety, in the sum of two hundred and fifty dollars, as follows:

7 *Stipulation.*

District court of the United States for the district of Wisconsin, in admiralty.

Whereas a libel of information was filed on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by the United States of America, against the steamer Montello, her boats, &c., for the reasons and causes in the said libel mentioned:

And whereas the said steamer Montello, her boats, &c., is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, as appears from the monition now on file in said court:

Appearing personally Stephen M. Booth as the claimant of the said steamer Montello, her boats, &c., and produced for surety William H. Wolf; and the said Stephen M. Booth & William H. Wolf, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of two hundred & fifty dollars, unto the said United States of America, that the said Stephen M. Booth & William H. Wolf shall abide and answer the decree of the said court in the aforesaid cause as to costs, and, unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

STEPHEN M. BOOTH.
W'M H. WOLF.

Taken and acknowledged this 27th day of March, 1868, before me.
J. M. MILLER,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

William H. Wolf, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of two hundred and fifty dollars over and above all his just debts and liabilities.

W'M H. WOLF.

Sworn to this 27th day of March, 1868, before me.
J. M. MILLER,
U. S. Commissioner, Wisconsin.

8 And same day (March 27th, 1868) came the said claimants by their proctors, Messrs. Hauser & Colman, and filed their claim as follows:

Claim.

To the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin:

Stephen M. Booth, of Packwaukee, in the county of Marquette, and State of Wisconsin, and Charles W. Slayton, of Berlin, in the county of Green Lake, and State of Wisconsin, joint owners of the steamer Montello, her tackle, apparel, and furniture, intervening for their interests in the said steamer Montello, her tackle, apparel, and furniture, appear before this honorable court, and claim the said steamer, her tackle, apparel, and furniture, and state that they are the true and bona-fide owners thereof, and that no other person is the owner thereof.

And thereupon the said claimants pray that this honorable court will be pleased to decree a restitution of the same to them, and otherwise right and just to administer in the premises.

And the said Stephen M. Booth further makes affidavit that he is duly authorized by the said Charles W. Slayton to appear and make this claim in his name and stead.

S. M. BOOTH.

Sworn before me March 27, 1868.

J. M. MILLER,
U. S. Com'r, Wis.

HAUSER & COLMAN, *Proctors.*

9 And same same day (March 27th, 1868) came the said claimants by their proctors, and filed their exceptions to the libel of J. B. D. Cogswell as follows:

Claimants' exceptions.

To the Honorable Andrew G. Miller, judge of the district court of the United States for the District of Wisconsin:

The exceptions of Stephen M. Booth and Charles W. Slayton, respondents, to the libel of information of J. B. D. Cogswell, attorney of the United States for the district of Wisconsin, against the steamer Montello, allege that the said libel is informal and insufficient as follows:

First exception. That the same does not allege or specify on what waters navigable the said steamer was employed in carrying passengers.

Second exception. That the same does not allege or specify what acts of Congress, if any, have been violated.

Third exception. That the same does not show that the matters set forth are within the admiralty and maritime jurisdiction of this court.

Fourth exception. That this honorable court has no jurisdiction of the matters contained in the said libel, the same not being matters of admiralty and maritime jurisdiction, in that the said steamer Mon-
10 tello was, at the time of seizure, and at all other times, employed and used wholly on the inland waters of the State of Wisconsin, and none other, and was not engaged in the coasting trade, or foreign commerce, or any trade between different States of the United States.

In all of which particulars the said libel is irrelevant, informal, and insufficient.

HAUSER & COLMAN,
Proctors for Respondents.

J. H. HAUSER, *Advocate.*

APRIL 7TH, 1868.—This day came the attorney of the United States for the district of Wisconsin, Tho's Hood, esqr., and filed amended libel of information as follows:

Amended libel of information.

District court of the United States of America.

DISTRICT OF WISCONSIN, *ss:*

To the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin:

John B. D. Cogswell, attorney of the United States for the district of Wisconsin, who prosecutes for said United States, exhibits this his amended libel of information against the vessel called and known as the steamer Montello, her boats, tackle, apparel, and furniture, en-
11 gine, and boiler, and against all persons lawfully intervening for their interest therein.

And thereupon the said John B. D. Cogswell doth allege, articulately propound, and give the said judge to understand that, on the 20th day of December, A. D. 1867, at Eureka, in said district, and on waters navigable from the sea by vessels of ten tons or more burden, C. Latham Sholes, esqr., collector of customs for the collection district of Milwaukee, did seize the aforesaid steamer, her boats, tackle, apparel, and furniture, engine and boiler, and now holds and has the same in his custody at the, and within the, district of Wisconsin, being the district within which the same was brought, as being forfeited to the United States, for the causes hereinafter stated, to wit:

First. For that heretofore, to wit, on the 1st day of October, A. D. 1867, the owner, master, or captain of the said vessel called the steamer "Montello," being a steamboat or vessel propelled in whole or in part by steam, and of twenty tons burden and upwards, did transport goods, wares, and merchandize, and passengers, in and upon the bays, lakes, rivers, and other navigable waters of the United States, and, having and carrying said passengers on board, did navigate the Fox River, between the ports and places of Oshkosh and Portage City, in
12 said district, and prior to said seizure, to wit, at the time aforesaid, was and has been engaged in carrying and transporting cargoes of freight and merchandize, consisting of the products of the State of Wisconsin, destined for use and consumption in other States of the United States, and foreign countries; and also, that prior to said seizure said steamboat was and has been engaged in carrying cargoes of freight and merchandize, consisting of the products of other States of the United States, and transported therefrom to the State of Wisconsin, and destined to different points and ports within the said State of Wisconsin, without having complied with the conditions of an act of the Congress of the United States approved July 7th, A. D. 1838, entitled "An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam," and without complying with the terms of an act entitled "An act to amend an act entitled 'An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam,'" approved, August 30th, A. D. 1852, in this, to wit: that said owner, master,
13 or captain had not first obtained from the proper officer an enrolment and license under the existing laws, contrary to the statutes of the United States in such case made and provided; by reason whereof, and by force of the said statutes, the owner or owners of said

vessel forfeited and became liable to pay to the United States the sum of five hundred dollars, for the payment of which sum the said vessel became liable to be seized and proceeded against by way of libel, and for the recovery of which this civil and maritime cause is now instituted.

Second. That heretofore, to wit, on the 1st day of October, A. D. 1867, the said vessel called the steamer Montello, being a steamboat propelled in whole or in part by steam, and navigating the bays, inlets, rivers, harbors, and other waters of the United States, and not being a vessel subject to the jurisdiction of a foreign power and engaged in foreign trade, but which said steamer was and is owned in whole by citizens of the United States, was navigated with passengers on board, upon the waters of the Fox River, between the places of Oshkosh and Portage City, in said district, an additional safety valve of such dimensions
14 and arrangement as had been theretofore prescribed by the board of supervising inspectors, not having been placed upon the boilers of said steamer as provided by law, and no good and reliable water-guage having been provided for such boilers contrary to the statutes of the United States, by reason whereof and by force of the statutes the owner or owners of said vessel forfeited and became liable to pay to the United States the sum of five hundred dollars, for the payment of which sum the said vessel became liable to be seized and proceeded against by way of libel, and for the recovery of which this civil and maritime cause is now instituted.

The said attorney of the United States, on behalf of the said United States, saith that all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court. Wherefore he prays that process in due form of law may issue against the said vessel called the steamer Montello, her boiler, engine, boats, tackle, apparel, and furniture, to enforce the forfeiture thereof, and requiring notice to be given to all persons concerned in interest to appear and show
15 cause on the return day of such process why such forfeiture should not be decreed.

JNO. P. D. COGSWELL,
Attorney of the United States for the District of Wisconsin.

MARCH 31, 1868.

And same day (April 7th, 1868) came the respondents by their proctors, Messrs. Hauser & Colman, and filed exceptions to the amended libel of information as follows:

Exceptions to amended libel.

To the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin:

The exception of Stephen M. Booth and Charles W. Slayton, respondents to the amended libel of information of J. B. D. Cogswell, attorney of the United States for the district of Wisconsin, against the steamer Montello, her boats, tackle, apparel, and furniture, engines, and boiler, allege that the said amended libel is informal, irrelevant, and insufficient as follows, to wit:

First exception. That this honorable court has no jurisdiction of the matters contained in the first and second articles, or any articles,
16 of the said amended libel, the same not being matters of admiralty and maritime jurisdiction, in that the said steamer Montello was employed and used wholly on the inland waters of the State of Wisconsin, and none other, at the time of seizure, or at any other time,

and was not engaged in the coasting trade, or foreign commerce, or in any trade or commerce between different States of the United States.

In all of which particulars the said amended libel is informal, irrelevant, and insufficient. Wherefore the respondents pray that the said libel and all proceedings, by the United States of America, against the steamer Montello, her boats, tackle, apparel, furniture, and engine, and boiler, be dismissed.

HAUSER & COLMAN,
Proctors for Respondents.

J. H. HAUSER, *Advocate.*

And now at this same term, to wit, April term, A. D. 1868, and on the first day thereof, to wit, on the 13th day of April, A. D. 1868, the following proceedings were had, to wit:

Decree.

UNITED STATES OF AMERICA
vs.
THE STEAMER MONTELLO, HER BOATS, &C.—STEPHEN M. BOOTH, respondent. } In admiralty.

17 This day came the district attorney, and came the respondent by his advocates; and the exceptions of respondent to this information being argued, it is ordered by the court that said information be, and hereby is, dismissed, and that a warrant of restitution do issue.

A. G. MILLER.

Decree signed, recorded, & enrolled April 13th, 1868.

J. M. MILLER, *Clerk.*

Appeal.

And same day (April 13th, 1868) came said district attorney in open court, and prayed an appeal to the circuit court of the United States for the district of Wisconsin; which appeal is allowed.

Warrant of restitution issued as follows:

Warrant of restitution.

18 DISTRICT OF WISCONSIN, *ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by the United States of America, against steamer Montello, her engines, machinery, boats, tackle, apparel, and furniture, praying that the same may be condemned as forfeited to the said libellant:

And whereas the said steamer Montello, her engines, &c., has been attached by the process of the said court in pursuance of the prayer of the libel, and is now in your custody in virtue of said process:

And whereas also a claim has been interposed and filed in said court by Stephen M. Booth, and such proceedings have been thereupon had that by the sentence and decree of said court in this cause, made and

pronounced on the 13th day of April, eighteen hundred and sixty-seven, the said information being dismissed, the said steamer Montello, her engines, &c., was adjudged to belong as claimed, and was ordered to be restored to the said claimant:

Therefore you, the said marshal, are hereby commanded to release the said steamer Montello, her engines, &c., from arrest, and to deliver and return the same unto the said Stephen M. Booth.

And what you have done in the premises do you make return thereof before the said court of admiralty forthwith, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States of America for the district of Wisconsin, at the city of Milwaukee, in said district, this 13th day of April, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of these United States the 92.

J. M. MILLER, *Clerk.*

19 *Return.*

In obedience to the within warrant I have this 15th day of April, A. D. 1868, released the steamer Montello from arrest as commanded.

Service, $2 00. CASSIUS FAIRCHILD,
U. S. Marshal.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the 92d.

[SEAL.] J. M. MILLER, *Clerk.*

End of record from district court.

20 And afterwards, to wit, at a stated term of the circuit court of the United States for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district, on the second Monday (being the fourteenth day) of September, A. D. 1868, and on the eighth day thereof, to wit, on the 22nd day of September, A. D. 1868, the following proceedings were had, to wit:

Hearing in circuit court.

THE UNITED STATES OF AMERICA
vs.
THE STEAMER MONTELLO, HER BOATS, &c.—
Stephen M. Booth et al., claimants. } Appeal in admiralty.

This day came the district attorney, and also the claimants by their counsel, Mr. Hauser, and this cause came on to be heard before the Honorable David Davis, associate justice of the Supreme Court of the

United States, assigned to this circuit, and the hearing being concluded, the same was held under advisement.

And now at this same term, to wit, September term, A. D. 1869, and on the seventh day thereof, to wit, on the 20th day of September, A. D. 1869, the following proceedings were had, to wit:

21 *Decree.*

THE UNITED STATES OF AMERICA
vs.
THE STEAMER MONTELLO, HER BOATS, &c.—
Stephen M. Booth et al., claimants.
} Appeal in admiralty.

This day came the district attorney, and the claimants by their counsel; and on consideration of this cause and the arguments of counsel, it is ordered by the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, that the decree of the district court dismissing the information here in be, and hereby is, affirmed.

And afterwards, to wit, on the 16th day of said term, to wit, on the 5th day of October, A. D. 1869, the following proceedings were had, to wit:

Appeal.

THE UNITED STATES OF AMERICA
vs.
THE STEAMER MONTELLO, HER BOATS, &c.—
Stephen M. Booth et al., claimants.
} Appeal in admiralty.

This day came the district attorney, and in open court prayed an appeal to the Supreme Court of the United States. Whereupon it is ordered by the court that said appeal be, and hereby is, allowed. Whereupon a citation issued.

22 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Edward Kurtz, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a copy of the record and proceedings in the suit of the United States against the steamer Montello, her boats, &c.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the said United States the ninety-fourth.

[SEAL.] EDWARD KURTZ, *Clerk.*

23 The United States of America to Stephen M. Booth & Charles W. Slayton, claimants of the steamer Montello, her boats, &c., greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at Washington on the first Monday of December next, pursuant to an appeal in the circuit court of the United States for the district of Wisconsin, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree passed against the said United States of America should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme court of the United States, this fifth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the 94th.

A. G. MILLER,
District Judge U. S. for the Wisconsin District.

Served on the above-named Stephen M. Booth & Charles W. Slayton, by delivering a copy of this citation to J. H. Hauser, their proctor, this 22d day of November, A. D. 1869.

C. S. HAMILTON, *Marshal.*

Fees.

Service	$2 00
Travel	6 00
	$8 00

(Indorsed:) U. S. circuit court Wisconsin. The United States vs. the steamer Montello. Citation.

(Indorsement on cover:) No. 297. The United States, appellants, vs. the steamer Montello, her tackle, &c.—Stephen M. Booth & Charles W. Slayton, cl'mt's. Wisconsin C. C. U. S.
, Filed 30 November, 1869.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *Appellants*,
vs.
THE STEAMER MONTELLO, *etc.*,
SHERMAN M. BOOTH AND CHARLES W. SLAYTON, *Claimants*.
} No. 103.

Appeal from the Circuit Court of the United States for the District of Wisconsin.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *Appellants*,
vs.
THE STEAMER MONTELLO, *etc.*,
SHERMAN M. BOOTH AND CHARLES W. SLAYTON, *Claimants*.
} No. 103.

Appeal from the Circuit Court of the United States for the District of Wisconsin.

BRIEF FOR THE UNITED STATES.

This was a libel of information against the steamer "Montello," to recover a penalty claimed to have been forfeited to the United States by her owners, for not having procured a license for and inspection of said steamer under the provisions of the acts of July 7, 1838, (5 Stat., 304,) and August 30, 1852, (10 Stat., 61,) while the same was employed in transporting goods, wares, and merchandise, and passengers on Fox river, in the State of Wisconsin.

The proceeding was commenced in the district court of the United States for the district of Wisconsin on the 28th day of December, 1867, the libel then filed, after

setting forth the seizure of the steamer by the collector, charging that on the 1st of October, 1867, she was used and employed in the transportation of passengers on the navigable waters of the United States, without having been inspected pursuant to the provisions of the acts of Congress at any time within twelve months prior to that date; by reason whereof the owners had forfeited to the United States the sum of five hundred dollars, for which the steamer became liable, etc.

Monition and attachment thereupon issued; and afterwards, on the 27th of March, 1868, Messrs. S. M. Booth and C. W. Slayton intervened as claimants, and filed the following exceptions to the libel, viz: 1st. That it did not allege or specify on what waters navigable the steamer was employed in carrying passengers. 2d. That it did not allege or specify what acts of Congress, if any, had been violated. 3d. That it did not show that the matters set forth were within the admiralty and maritime jurisdiction of the court. 4th. That the court had no jurisdiction of the matters contained in the libel, the same not being matters of admiralty and maritime jurisdiction, in that the said steamer was at the time of seizure, and at all other times, employed and used wholly on the inland waters of the State of Wisconsin, and none other, and was not engaged in the coasting trade, or foreign commerce, or any trade between different States of the United States.

On the 7th of April, 1868, an amended libel was filed in behalf of the United States, which charged—

1st. That on the 1st of October, 1867, the owner, master, or captain of the Montello, being a steamboat or vessel propelled in whole or in part by steam, and of twenty tons burden and upwards, "did transport goods, wares, and merchandise, and passengers, in and upon the bays, lakes, rivers, and other navigable waters of the United States, and, having and carrying said passengers on board, did navigate the Fox river, between the ports and places of Oshkosh and Portage City, etc., and prior to said seizure, to wit, at the time aforesaid, was and has been engaged in carrying and transporting cargoes of freight and merchandise, consisting of the products of the State of Wisconsin, destined for use and consumption in other States of the United States and foreign countries, etc., and also was, and had been engaged in carrying cargoes of freight and merchandise consisting of the products of other States of the United States, and transported therefrom to the State of Wisconsin, and destined to different points and ports within the said State of Wisconsin, without having complied with the conditions" of the acts of July 7, 1838, and August 30, 1852, "in this, that said owner, master, or captain had not first obtained from the proper officer an enrolment and license under the existing laws, contrary to the statutes of the United States in such cases made and provided; by reason whereof," etc.

2d. That on the said day the said steamer was

navigated, with passengers on board, upon the waters of the Fox river between the places aforesaid, "an additional safety-valve of such dimensions and arrangement as had been theretofore prescribed by the board of supervising inspectors not having been placed upon the boilers of said steamer as provided by law, and no good and reliable water-gauge having been provided for such boilers, contrary to the statutes of the United States; by reason whereof," etc.

To the amended libel claimants also filed exceptions, viz: that the court had no jurisdiction of the matters contained therein, the same not being matters of admiralty and maritime jurisdiction, "in that the said steamer Montello was employed and used wholly on the inland waters of the State of Wisconsin, and none other, at the time of seizure, or at any other time, and was not engaged in the coasting trade, or foreign commerce, or in any trade or commerce between different States of the United States."

The exceptions being afterwards argued, the court on the 13th of April, 1868, dismissed the information, and directed a warrant of restitution to issue; whereupon an appeal to the circuit court of the United States for the district of Wisconsin was on same day prayed and allowed. The circuit court, on the 20th of September, 1869, affirmed the decree of the district court dismissing the information, and on the 5th of October following an appeal was taken to the Supreme Court of the United States.

The questions of law raised by the record here appearing to be the same in every respect as those presented in the case of the steamer Daniel Ball, No. 241, December term, 1869, the printed argument submitted to the court in behalf of the United States in that case is respectfully referred to as applicable to this.

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Attorney General.